

SERVED: August 9, 1993

NTSB Order No. EA-3956

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 5th day of August, 1993

_____)	
JOSEPH M. DEL BALZO,)	
Acting Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	
v.)	Dockets SE-12843 and
)	SE-12832
)	
SCOTT L. SLAY and)	
ALFRED L. KNOWLES,)	
)	
Respondents.)	
_____)	

ORDER DISMISSING APPEAL

The respondents, by counsel, on June 14, 1993, sought an extension of time to file an appeal brief which was already out of time, as it was due on June 9, 50 days after the law judge rendered an oral initial decision in the proceeding.¹ See Section 821.48(a) of the Board's Rules of Practice, 49 CFR Part 821.² Respondents' counsel states that he had mistakenly

¹The law judge affirmed orders of the Administrator suspending the respondents' Airline Transport Pilot certificates (Nos. 459069243 and 261212922) for 60 days for their alleged violations of sections 91.13(a), 91.119(a), and 91.119(c) of the Federal Aviation Regulations, 14 CFR Part 91.

²Section 821.48(a) provides as follows:

calculated the deadline for the appeal brief to be June 19; that is, 60 days after the decision. The error, which counsel asserts was the product of inadvertence and excusable neglect, was, he represents, discovered on June 14. Counsel contends that an extension to June 17 will not prejudice the Administrator.³

In a response opposing the extension request, the Administrator, citing Administrator v. Hooper, NTSB Order EA-2781 (1988), submits that the standard for the grant or denial of an untimely extension request is good cause, not prejudice to another party. He points out, in this regard, that the Board has repeatedly rejected miscalculation of a due date as satisfying that standard. The Administrator therefore argues that the motion for an extension of time should be denied and his motion for dismissal of the appeal on the ground that it was not timely perfected should be granted. We agree.

As the Administrator correctly notes, the Board does not accept miscomputation as establishing good cause to excuse the failure to meet a filing deadline. See, e.g., Administrator v. Royal American Airways, Inc., 5 NTSB 1089 (1986)(late notice of appeal), aff'd Royal American Airways, Inc. v. FAA, 9th Cir., No. 86-7512, April 29, 1987 and Administrator v. Beavers, NTSB Order EA-3359 (1991)(late appeal brief). Respondents have identified no reason why such precedent should not be followed in this instance. We will, therefore, dismiss the respondents' appeal on the Administrator's motion.

(..continued)

§821.48 **Briefs and oral argument.**

(a) Appeal briefs. Each appeal must be perfected within 50 days after service of an oral initial decision has been rendered, or 30 days after service of a written initial decision, by filing with the Board and serving on the other party a brief in support of the appeal. Appeals may be dismissed by the Board on its own initiative or on motion of the other party, in cases where a party who has filed a notice of appeal fails to perfect his appeal by filing a timely brief.

³An appeal brief was in fact filed on that date.

ACCORDINGLY, IT IS ORDERED THAT:

1. The respondents' motion for an extension of time is denied, and
2. The Administrator's motion to dismiss the respondents' appeal is granted.

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HART and HAMMERSCHMIDT, Members of the Board, concurred in the above order.